

 <p style="text-align: center;"><i>University of Pittsburgh Police Department</i></p> <p style="text-align: center;">Rules &amp; Regulations Manual</p>	<b>Reference Number: (Chapter / Section)</b> 4 - 16
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	<b>Rescinds:</b> All Previous
	<b>Amends:</b> N/A
<b>Title:</b> <b>Arrest and Detentions of Foreign Nationals</b>	 <hr/> By Order of James K. Loftus, Chief of Police

## **1.0 Policy**

Under the terms of the Vienna Convention and other treaties, whenever officers take into custody a person who states he or she is a foreign national or officers otherwise learn that the person is a foreign national, additional notification procedures are required. Compliance with this policy and procedures is important because it enhances the ability of the United States to insist that foreign officials provide the same rights to U.S. diplomats and citizens who are arrested abroad.

## **2.0 Definitions**

**Foreign National:** Any person who is not a United States citizen; whether tourist, visitor, migrant worker with a temporary work permit, alien resident, illegal alien, asylum-seeker, or person-in-transit.

**Diplomatic Immunity:** A principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities.

## **3.0 Summary of Requirements Pertaining to Foreign Nationals**

- A. When foreign nationals are arrested or detained, it is mandatory that they be advised of the right to have their consular officials notified, without unreasonable delay.
1. Law enforcement officers who actually make the arrest or who assume responsibility for a foreign national's detention are responsible for making proper notification.
  2. The mandatory advisement statement is located in the "Consular Notification and Access Reference Card: Instructions for Arrests and Detentions of Foreign Nationals" and the Consular Notification and Access reference book (supervisor's office and Communication Room).

This advisement must be made even if the suspect will not be interrogated.

- B. In some cases, the nearest consular official *must* be notified of the arrest or detention of a foreign national, *regardless of the national's wishes*.
- C. Consular officials are entitled to access their nationals in detention and are entitled to provide consular assistance. However, notification places no obligation upon consular officials to perform any services on behalf of the foreign national.
- D. Additional circumstances in which consular officials must be notified include:
  - 1. When a government official becomes aware of the death of a foreign national;
  - 2. When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent;
  - 3. When a foreign ship or aircraft wrecks or crashes.

#### **4.0 Procedure to Follow When a Foreign National is Arrested or Detained**

- A. Attempt to determine the foreign national's citizenship. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
- B. If the foreign national's country *is* on the list of *mandatory notification* countries:

NOTE: A list of the mandatory notification countries is located in the next sub-section.

- 1. Notify that country's nearest consular official, without unreasonable delay, of the arrest/detention - after arrival at the police department, jail, or other significant detention such as hospitalization, but before interrogation or booking.
  - a. Phone and fax numbers for foreign embassies and consulates in the United States are located in the "Consular Notification and Access" reference book, Part Six.
  - b. Use the *Fax Sheet for Notifying Consular Officers of Arrests or Detentions* (form 58.0) to make notification when the consulate has a fax available.
  - c. Submit the fax sheet and fax transmittal report (receipt) with the Incident Report. If the fax machine does not print a fax transmittal report, record the date and time the fax was sent in the Incident Report.
  - d. If a fax machine is not available, officers shall personally call to make consular notification. The date, time, and point of contact shall be documented in the Incident Report.
    - 1. If contact is not successful, document the notification attempt in the Incident Report.

2. Notify jail staff if the suspect is being booked and notification has not been made.
    2. Tell the foreign national of the notification.
      - a. The foreign national must be advised of the following:

“Because of your nationality, we are required to notify your country consular representative here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country’s consular officials as soon as possible.”
      - b. Translations of this statement are found in part four of the “Consular Notification and Access” reference book.
  3. Notification must be made, regardless of the national’s wishes.
    - a. Where an arrestee is seeking asylum in the U.S., officers shall not reveal that fact in their mandatory notification to the foreign consul. Arrangements can be made to protect the alien while ensuring that his/her government’s right to notification is protected.
      1. The Bureau of Citizenship and Immigration Services (BCIS), within the Department of Homeland Security must be contacted immediately in these cases.
      2. Under no circumstance shall the foreign national be turned over to any foreign government official. They shall remain in protective custody until they are delivered to BCIS.
  4. Keep a written record of the notification and actions taken.
- C. If the foreign national’s country is *not on the mandatory notification* list:
  1. Offer, without unreasonable delay, to notify the foreign national’s consular officials of the arrest/detention.
    - a. The foreign national must be informed of the following:

“As a non-US citizen who is being arrested or detained, you are entitled to have us notify your country’s consular representative here in the United States. A consular official from your country may be able to help you obtain legal counsel from your country and may contact your family and visit you in detention, among other things. If you want us to notify your country’s consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country’s consular officials?”
    - b. Translations of this statement are found in Part Four of the “Consular Notification and Access” reference book.

2. If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without unreasonable delay - after arrival at the police department but before any interrogation or booking.
  - a. Phone and fax numbers for foreign embassies and consulates in the United States are located in the "Consular Notification and Access" reference book, Part Six.
  - b. Use the *Fax Sheet for Notifying Consular Officers of Arrests or Detentions* (form 58.0) to make notification when the consulate has a fax available.
  - c. Submit the fax sheet and fax transmittal report (receipt) with the Incident Report. If the fax machine does not print a fax transmittal report, record the date and time the fax was sent in the Incident Report.
  - d. If a fax machine is not available, officers shall personally call to make consular notification. The date, time, and point of contact shall be documented in the Incident Report. If you are unable to make contact, document the notification attempt in the Incident Report. Follow up to ensure that notification is made.
  
- D. Because the University has certain federal and other reporting requirements, the Office of International Services should be notified of any foreign national University affiliates that are arrested or detained. The number for the Office of International Services is 412-624-7120.

**5.0 Mandatory Notification Countries and Jurisdictions:**

Algeria	Malta
Antigua and Barbuda	Mauritius
Armenia	Moldova
Azerbaijan	Mongolia
Bahamas, The	Nigeria
Barbados	Philippines
Belarus	Poland (non-permanent residents only)
Belize	Romania
Brunei	Russia
Bulgaria	Saint Kitts and Nevis
China <sup>1</sup>	Saint Lucia
Costa Rica	Saint Vincent and the Grenadines

Cyprus	Seychelles
Czech Republic	Sierra Leone
Dominica	Singapore
Fiji	Slovakia
Gambia, The	Tajikistan
Georgia	Tanzania
Ghana	Tonga
Grenada	Trinidad and Tobago
Guyana	Tunisia
Hong Kong <sup>2</sup>	Turkmenistan
Hungary	Tuvalu
Jamaica	Ukraine
Kazakhstan	United Kingdom <sup>3</sup>
Kiribati	U.S.S.R. <sup>4</sup>

<sup>1</sup> Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

<sup>2</sup> Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or "SAR." Under paragraph 3(f)(2) of the March 25, 1997, U.S.-China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports--*i.e.*, immediately, and in any event within four days of the arrest or detention.

<sup>3</sup> British dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

<sup>4</sup> Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately above.

## **6.0 Diplomatic Immunity**

- A. Foreign nationals with diplomatic immunity are issued an Identification Card by the Department of State.
  - 1. The degree of immunity is detailed on the back of the ID card.
  - 2. Contact the Department of State to verify the immunity status of the foreign national.
- B. When a foreign national with full diplomatic immunity is involved and the safety of the public is in imminent danger or it is apparent that a grave crime may otherwise be committed, police officers may intervene to the extent necessary to halt such activity. This intervention may include use of force and/or arrest if otherwise justified according to existing policy. The Department of State must be contacted immediately in these cases.
- C. When a foreign national with full diplomatic immunity is suspected of committing a crime, obtain as much information as possible during the initial investigation and thoroughly document it in the Incident Report. The supervisor shall be notified in all such cases.
- D. The supervisor will notify the chief of police or his designee and when approved will fax a copy of the Incident Report to the Department of State so that diplomatic remedies may be sought.
- E. Foreign nationals may be stopped for investigation (Terry Stop) or stopped and cited for traffic violations regardless of their diplomatic immunity.
  - a. A traffic stop is not considered to be an arrest or detention as it relates to diplomatic immunity.
  - b. The diplomat who is being cited for a traffic violation should be requested to sign the citation, though immunity prevents the person from being compelled to do so. If they refuse to sign, write "Refused": Diplomatic Personnel" on the citation.
  - c. If the officer judges the individual too impaired to drive safely, the officer should not permit the individual to continue to drive (even in the case of diplomatic agents).

## **7.0 Resources**

- A. "Diplomatic and Consular Immunity - Guidance for Law Enforcement and Judicial Authorities" Published by the United States Department of State.
- B. "Consular Notification - Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials To Assist Them" Published by the United States Department of State.
- C. The complete publication of the "Consular Notification and Access" is available online at [http://travel.state.gov/consul\\_notify.html](http://travel.state.gov/consul_notify.html).